

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

400J0776

HOUSE BILL NO. 1308

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to establish the food tax refund program and to make an
2 appropriation therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is established the food tax refund program to be administered by the
5 Department of Social Services. The purpose of the program is to provide sales tax refunds on
6 food for purchases made in accordance with chapters 10-45 and 10-46 to South Dakota families
7 who need it most.

8 Section 2. To be eligible for the food tax refund program, a person shall:

- 9 (1) Be a South Dakota resident;
- 10 (2) Be the head of the household and certify the number of persons in the household;
- 11 (3) Have countable income at or below one hundred fifty percent of the federal poverty
12 level, as updated annually by the United States Department of Health and Human
13 Services and published in the Federal Register.

14 Section 3. The Department of Social Services shall promulgate rules, pursuant to chapter
15 1-26, relating to:

- 16 (1) Eligibility criteria;



- 1 (2) Refund amounts or levels;
- 2 (3) Payment provisions;
- 3 (4) Household reporting requirements; and
- 4 (5) Recoveries.

5 Section 4. To receive sales tax on food refunds pursuant to this Act, a household shall:

- 6 (1) Apply for a quarterly refund on forms prescribed by the Department of Social
7 Services using the prior three month periods's income;
- 8 (2) Certify that any refund received will only be used to purchase food as defined in
9 sections 5 and 6 of this Act; and
- 10 (3) Report quarterly on forms prescribed by the Department of Social Services to
11 continue eligibility for a refund.

12 Section 5. That § 10-45-1 be amended by adding thereto four NEW SUBDIVISIONS to read
13 as follows:

14 "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen,
15 dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for
16 its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft
17 drinks, candy, or prepared food;

18 "Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The
19 term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice
20 of similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume;

21 "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in
22 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
23 drops, or pieces. The term, candy, does not include any preparation containing flour and does
24 not require refrigeration;

"Prepared food," any:

(a) Food sold in a heated state or heated by the seller;

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item. The term, prepared food, in this subsection does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003, so as to prevent food borne illnesses; or

(c) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

Section 6. That § 10-46-1 be amended by adding thereto four NEW SUBDIVISIONS to read as follows:

"Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, soft drinks, candy, or prepared food;

"Soft drinks," any nonalcoholic beverages that contain natural or artificial sweeteners. The term, soft drinks, does not include any beverage that contains milk or milk products, soy, rice of similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume;

"Candy," any preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. The term, candy, does not include any preparation containing flour and does not require refrigeration;

1 "Prepared food," any:

2 (a) Food sold in a heated state or heated by the seller;

3 (b) Two or more food ingredients mixed or combined by the seller for sale as a single
4 item. The term, prepared food, in this subsection does not include food that is only
5 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods
6 containing these raw animal foods requiring cooking by the consumer as
7 recommended by the Food and Drug Administration in chapter 3, part 401.11 of its
8 Food Code as of January 1, 2003, so as to prevent food borne illnesses; or

9 (c) Food sold with eating utensils provided by the seller, including plates, knives, forks,
10 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
11 packaging used to transport the food.

12 Section 7. At the time in which a household has been accepted into the food tax refund
13 program, the household is entitled to a quarterly refund of the estimated amount of food tax to
14 be paid as determined in section 8 of this Act.

15 Section 8. The estimate of food tax paid or refund awarded under this program shall be
16 determined based on:

17 (1) The thrifty food plan as determined annually by the United States Department of
18 Agriculture; and

19 (2) The number of individuals in the household.

20 A monthly allotment shall be determined based on the thrifty food plan's maximum
21 allotment and the corresponding number of individuals in the household. Once the monthly
22 allotment is determined, it shall be annualized and multiplied by the average sales tax rate in
23 South Dakota as determined by the Department of Revenue and Regulation. This shall be the
24 annual level of refund eligible for the household. The annual refund shall be converted to a

1 quarterly refund. This shall be the amount of eligible refund to the household.

2 Section 9. If a household is a participant in the food stamp program for any of the period in
3 which a refund is computed under section 8 of this Act, those food stamp tax benefits shall be
4 deducted from any refund received under the provisions of this Act.

5 Section 10. The method of payment utilized to make payments authorized by this Act shall
6 be made by electronic food tax card or by paper warrant.

7 Section 11. There is hereby appropriated from the state general fund the sum of five million
8 dollars (\$5,000,000), or so much thereof as may be necessary, and two million two hundred fifty
9 thousand dollars (\$2,250,000) of other fund expenditure authority, or so much thereof as may
10 be necessary, to the Department of Social Services for payment of eligible expenses authorized
11 by this Act .

12 Section 12. The secretary of the Department of Social Services shall approve vouchers and
13 the state auditor shall draw warrants to pay expenditures authorized by this Act.